IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 341 of 2007
To
FIRST APPEAL No. 354 of 2007
With
FIRST APPEAL No. 356 of 2007
To
FIRST APPEAL No. 376 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER & 1 - Appellant(s)
Versus
HEMUBHAI JERAMBHAI & 1 - Defendant(s)

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Appearance :
MR SUNIT SHAH G.P. for Appellant(s) : 1 - 2.
MR NITIN M AMIN for Defendant(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 06/03/2007

ORAL COMMON JUDGMENT

1. This entire group of First Appeal has arisen from the common judgment and award made by the Joint District Judge, at Dhranghdhara in Land Acquisition Reference Case No. 1/1998 and its allied matters, dated 8th September, 2003. They are heard together and now they are being disposed of by this common judgment.

2. The appeals are filed by the Special Land Acquisition Officer, Narmada Project Unit No. II and the Executive Engineer, Narmada Yojana, Saurashtra Branch Canal, Unit No. 1/1. The lands in question are situated at village Hebatpur, Taluka Dasada, District Surendrangar. Since the need to acquire them for the purpose of constructing Narmada Canal, Saurashtra Branch Canal arose, at the instance of the State Government, Notification under Section 4 of the Land Acquisition Act, 1894 [hereinafter referred to as the “Act”] was published on two different dates in respect of different lands i.e., on 20th August, 1992 in respect of lands covered under LAQ No. 131/1992 and on 6th October, 1992 in respect of lands covered under LAQ No. 147/1992. Later on declaration under Section 6 of the Act was made on 31st March, 1993 in respect of lands covered under LAQ No. 131/1992 and on 3rd May, 1993 in respect of lands covered under LAQ No. 147/1992. After complying with all the necessary formalities appellant no. 1 made the award

dated 26th October, 1994 and determined the market value for the irrigated land at Rs.2.25 per sq. mtr., and for non-irrigated land at Rs.1.50 per sq. mtr. For waste land the price was determined at Rs.0.10 paise. By second award in respect of lands covered under LAQ No. 147/1992 dated 24th February, 1995, appellant no. 1 applied the same rate. Since the respondents were dissatisfied with the quantum of compensation, they submitted applications under Section 18 of the Act for making reference to the Civil Court for enhancement of the compensation. The references were heard by the learned Joint District Judge, Dhranghdhara. The learned Judge consolidated all the LAQ cases and decided them together by recording common evidence in Land Reference Case No. 1/1998. The Reference Court by the aforesaid decision, enhanced the compensation and determined the market value at Rs.20=00 per sq. mtr., for all types of lands. Hence, these appeals.

3. I have heard Mr. Sunit Shah learned G.P., for the appellants and Mr. Nitin Amin learned advocate for the respondents. It is submitted by Mr. Shah that the Reference Court has ignored the relevant documentary evidence in the form of sale instances which were considered by appellant no. 1. He has further submitted that the market value determined by the Reference Court

is on higher side. He has submitted that the Court has committed an error in placing reliance upon the sale instances which are about 12 years prior to the date of the notification under Section 4 (1) of the Act in the instant case. As against that Mr. Amin has supported the judgment and has submitted that the Reference Court has rightly taken into consideration two awards made in respect of lands which are situated in the vicinity of the lands in question. He has, therefore, submitted that there is no need to interfere with the judgment and award of the Reference Court.

4. Having carefully considered the rival submissions and having perused the record and proceedings of the case, it clearly appears that the sole controversy involved in the present appeals is with regard to the quantum of the compensation. The learned Judge has elaborately discussed the oral as well as documentary evidence while considering the question of the then prevailing market value. The respondents i.e., the original claimants have adduced oral as well as documentary evidence. The evidence of claimant of Reference case no. 11/1998. Ahmedsang Modjar Gadhvi is at Exh. 70. He has given evidence on behalf of all the claimants. He has stated that he had seen all the lands under acquisition. He has further stated that they

produced different crops during the year and earned net income of 25,000=00 to Rs.30,000=00 per Vigha. He has further stated that their lands were situated adjacent to village Thorimubarak. According to him, the village Hebatpur had population of 3,500 and it had all the basic facilities such as telephone, light, houses with RCC slabs, Co-Operative Milk Society, Post Office, Ginning factory, Ayurvedi hospital etc. He has further stated that the lands of Thorimubarak were acquired at the rate of Rs. 17=00 per sq. mtr. According to him, the boundaries of Thorimubarak, Hebatpur are adjoining to each other. He has further stated that village Vani is also situated adjoining to village Hebatpur.

5. The appellants have examined witness Imranbhai Ibrahimbhai at Exh. 74. At the relevant time, he was serving as Talati of village Hebatpur. He has stated that many survey numbers under acquisition had wells and such entries were made in the Revenue Records. He has however denied the suggestions that the award made by appeallnt no. 1 was not just and proper.

6. The Deputy Executive Engineer Mr. Rajendrabhai Nanalal Patel has also deposed on behalf of the appellants. From the record it appears that about 48 sale instances in two groups of Land Acquisition Cases were

considered by the appellants. They were for the period between 1987-1992. The learned Judge has observed that the Special Land Acquisition Officer has considered some of them and has placed reliance on them on the ground that they reflected correct market value. However he did not consider other sale instances wherein the price paid was higher than the instances relied on by him. The learned Judge has also observed that Special Land Acquisition Officer has not kept in view the annual price increase. Hence the learned Judge appears to have placed reliance on the two awards which have been produced on behalf of the appellants at Exh. 14 and Exh. 15. They are in respect of lands of village Thorimubarak and Vani. So far as the lands of Thorimubarak are concerned, they were sought to be acquired for the same purpose and notification under Section 4 of the Act was issued on 19th September, 1991. In respect of the said lands, Reference under Section 18 of the Act was made before the Court of Special Judge [LAR] and 3rd Extra Assistant Judge, Ahmedabad (Rural), at Mirzapur, Ahmedabad. They were numbered as Land Acquisition Reference Case No. 226/1994 and its allied matters. Those cases were filed since the claimants of those cases were dissatisfied with the award made by the Land Acquisition Officer fixing the rate of compensation at Rs.2.40 paise per sq. mtr., The Court enhanced the compensation and determined the market value at Rs.19.40 paise per sq. mtr., and granted additional

sum of Rs.17=00 per sq. mtr. The concerned Executive Engineer being aggrieved by the said award of the Court preferred First Appeal No. 3701/1999 together with its cognate appeals before this Court. The Division Bench of this Court by its judgment dated 18th August, 2000 partly allowed the appeals and reduced the compensation by 40 paise per sq. mtr. In other words, this Court determined the market value of Rs.19=00 per sq. mtr.

7. So far as the land situated in the Sim of village Vani was concerned, it was acquired also for the Narmada Project. In that case notification under Section 4 (1) of the Act was published on 22nd March, 1980. There also the 2nd Joint District Judge, Ahmedabad (Rural), Mirzapur, while deciding the reference case determined the market value at Rs.10=00 per sq. mtr. Thus, in both these cases the lands were acquired for the same purpose. There is undisputed evidence that the lands of Hebatpur, Thorimubarak and Vani are situated adjacent to each other. The rate of compensation has been determined after judicial scrutiny. Therefore, they are reliable pieces of evidence and I see no error having been committed by the Reference Court while placing reliance on Exhs. 14 and 15 for determining the present market value. In the instant case notification under Section 4 of the Act was issued in the month of August and October,

1992. So far as the lands of Thorimubarak are concerned, notification under Section 4 of the Act was published in the year 1991 i.e., one year prior to the present notification. The Tribunal has, therefore, granted 10% increase and has determined the market value at the rate of 20=00 per sq. mtr. The learned Judge has also adequately discussed the law on this aspect. In view of the same, in my opinion, the market value determined by the Reference Court is just and proper and there is no need to disturb its award. In other words, there is no merit in these appeals and they are dismissed with no order as to costs.

R & P to be re-transmitted to the Reference Court forthwith.

[Akshay H. Mehta, J.]

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